IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NOS. 11 OF 2000, 60 OF 2000, 156 OF 2000 AND 23 OF 2001 WITH CROSS-OBJECTION NO.21 OF 2001

FIRST APPEAL NO. 11 OF 2000

1. Special Land Acquisition Officer (South Goa), Konkan Railway Corporation Limited, Amey Guest House, Davorlim Road, P.O. Navelim, Salcete, Goa, and

2. Chief Engineer, Konkan Railway Corporation Ltd., Rawnfond, near Margao Railway Station, Margao, Goa. ... Appellants.

Versus

Sandhya Purushottam Kankonkar, r/o Nagarsem, Canacona, Goa. ... Respondent.

Mr. E. Afonso, advocate for the appellants.

Mr. A.N.S. Nadkarni, with Mr. P. A. Kamat, Advocates for the respondent.

FIRST APPEAL NO. 60 OF 2000

1. Special Land Acquisition Officer (South Goa), Konkan Railway Corporation Ltd., Rawnfond, near Margao Railway Station, Margao, Goa, and

2. Chief Engineer, Konkan Railway Corporation Ltd., Rawnfond, near Margao

Railway Station, Margao, Goa. ... Appellants.

Versus

1. Shanu Budu Komarpant,
r/o Chaudi, Canacona, Goa,

2. Pauto Shankar Pagi (deceased)
by his Legal Representatives:-

2a. Devki P.Pagui,

2b. Ashok P. Pagui,

2c. Shambu P. Pagui,

2d. Sanju P. Pagui,

2e. Sandeep P. Pagui, all
r/o H. No.873, Patnem,
Colomb, Canacona, Goa. ... Respondents.

Mr. E. Afonso, advocate for the appellants.

Mr. A.N.S. Nadkarni with Mr. P. A. Kamat, Advocates for the respondents.

FIRST APPEAL NO. 156 OF 2000

1. Special Land Acquisition Officer,
(South Goa), Konkan Railway
Corporation Limited, Amey
Guest House, Davorlim Road,
P.O. Navelim, Salcete, Goa
403 707 and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao Railway
Station, Margao, Goa. ... Appellants.

Versus

Sadanand G. N. Gaoncar,
Nagorcem, Canacona, Goa. ... Respondents.

Mr. E. Afonso, advocate for the appellants.

Mr. A.N.S. Nadkarni with Mr. M. P. Amonkar advocates for the respondents.

FIRST APPEAL NO. 23 OF 2001 WITH CROSS-OBJECTION NO. 21 OF 2001

FIRST APPEAL NO. 23 OF 2001

1. Special Land Acquisition
Officer (South Goa), Konkan
Railway Corporation Ltd.,
Amey Guest House, Davorlim
Road, P.O. Navelim, Salcete,
Goa 403 707 and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ... Appellants.

Versus

1. Anil Dharmu Fal Dessai,
r/o House No.762,
Patnem-Canacona,
Goa,

2. Pandurang Dharmu Fal
Dessai (deceased), represented
by his legal heirs:

a. Prayankta Pandurang
Phaldessai, r/o House
No.762, Patnem-Canacona,
Goa,

b. Priyanka Pandurang
Phaldessai, r/o House No.762,
Patnem- Canacona, Goa. ... Respondents.

Mr. E. Afonso, advocate for the appellants.

Mr. A.N.S. Nadkarni with Mr. P. A. Kamat, advocates for the respondents.

CROSS-OBJECTION NO.21/2001/A IN
FIRST APPEAL NO. 23/2001

1. Anil Dharma Fal Dessai,
H.No.762, Patnem, Canacona,
Goa,

2. Pandurang Dharma Fal Dessai,
(expired) r/o House No.762,
Patnem, Canacona, Goa
(represented by L.Rs.)

2(a). Smt. Prayekta Pandurang
Phaldessai (wife) and

2(b). Miss Priyanka Pandurang
Phaldessai (daughter),
both r/o Patnem, Canacona, Goa. ... Applicants/Cross-Objectioners.

Versus

1. Special Land Acquisition Officer,
South Goa, KRCL, Amey Guest
House, Davorlim Road, P. O.
Navelim, Salcete, Goa 403 707 and

2. The Chief Engineer, Konkan
Railway Corpn. Ltd., 4th Floor,
Souza Towers, Church Square,
Panaji, Goa, 403 001. ... Original Party Respondents.

Mr. E. Afonso, advocate for the applicants/Cross- objectioners.

Mr. A.N.S. Nadkarni with Mr. P. A. Kamat, Advocates for the respondents.

CORAM : A. P. LAVANDE, J.

DATE : 30th March, 2005

ORAL JUDGMENT

All these appeals and cross-objection no.21 of 2001 can be disposed of by common Judgment since all the lands involved in these appeals are acquired by the same Notification and the point of law involved is the same. The learned counsel appearing for the parties have also submitted that all these appeals be disposed of by common judgment, since the facts involved in all these appeals are almost identical.

2. The land involved in First Appeal no.11 of 2000 was acquired by Notification dated 24th July, 1991, issued under Section 4 of the Land Acquisition Act, 1894, and the lands involved in the other three appeals were acquired by Notification dated 12th August, 1991. The details showing the area acquired, the survey numbers, the land acquisition case numbers, corresponding appeal numbers, and dates of Judgments/Awards of the Reference Court are as follows:-

Area acquired	*Survey nos*	*L.A.Case. Nos.*	*Appeal No.*	*Date of Judgment/Award of Rerference Court*
1	*2*	*3*	*4*	*5*
1150sq.mts.	22/24	213/95	11/2000	22-9-1999
5709 sq. mts.	108/16, 92/1 (part)	100/95	60/2000	23-12-1999
1719 sq. mts.	100/12, 100/14	95/95	156/2000	21-8-1999
5234 sq. mts.	108/9,108/7,104/ 26,404/2,104/15, 103/14, 108/5,108/3, 104/21,103/13, 103 /12	99/95	23/2001	11-10-2000

3. In respect of all the lands involved in the above appeals, the Special Land Acquisition Officer by his Awards dated 9th December, 1993 and 12th December, 1993, fixed the compensation at the rate of Rs.8.10 per square metre. Aggrieved, the respondents in these appeals sought reference under Section 18 of the Land Acquisition Act (hereinafter referred to as "the Act") claiming compensation at the rate of Rs.100/- per sq. mt. In the Reference Court the respondents herein examined one witness each in the respective cases and primarily relied upon Award dated 15th March, 1989. The said Award was in respect of the lands acquired for an approach road to Talpona- Galgibag bridge in Canacona Taluka. The said Award was in respect of an area of l,34,400 sq. mts. acquired by Notification dated 30th April, 1986, issued

under Section 4(1) of the Act. The properties bearing survey nos. 108/5 (part) and 108/7 (part) along with other properties were subject-matter of the said Award. In First Appeal no. 23 of 2000 part of the remaining property bearing survey nos.108/5 and 108/7 alongwith land bearing other survey nos. have been acquired.

4. The Reference Court, while passing the Awards which are impugned in these appeals relied upon Award passed in the year 1986 and after holding that the acquired lands are comparable and similar to the lands acquired forming the subject-matter of the Award dated 15th March, 1989, fixed the compensation at the rate of Rs.24/- per square metre, after giving increase of 10% per year from 1986.

5. Mr. Afonso, learned counsel appearing for the appellants in all these appeals submitted that the lands involved in all these appeals being agricultural tenanted lands had no building potential and, therefore, the Reference Court ought to have rejected the reference. According to the learned counsel, agricultural tenanted lands had no building potential and the same could not have been used for any other purpose other than agriculture. According to the learned counsel, the acquired lands in all these appeals were paddy fields and, therefore, in terms of Section 2 of the Goa Land Use (Regulation) Act, 1991, the acquired lands could not have been used for any purpose other than agriculture. Learned counsel relied upon Judgment of

Division Bench of this Court delivered on 9th February, 2005 in First Appeal No.221 of 2003 (***Smt. Janaki N. Morajkar vs. Spl. Land Acquisition Officer, South Goa & Anr.)*** in support of his contention that agricultural tenanted land has no building potential and the compensation in respect of agricultural tenanted land cannot be fixed on the basis of building potential. According to the learned counsel, the respondents in the appeals had not led any evidence to establish that they were entitled to higher compensation than the one fixed by the Land Acquisition Officer. Mr. Afonso further submitted that the increase of 10% every year taking the Award dated 15th March, 1989, as the basis is unwarranted since in a place like Canacona, there could not have been increase of 10% in the value of the property every year and secondly, the acquired lands were agricultural tenanted lands and by no stretch of imagination it can be said that the value of the agricultural tenanted lands increased every year by 10%.

6. Per Contra, Mr. Nadkarni, learned Counsel appearing for the respondents, submitted that there can be no quarrel with the proposition laid down in the judgment rendered by the Division Bench of this Court in First Appeal No.221 of 2003. However, the learned counsel submitted that the ratio of the said judgment is not applicable in the present appeals on the ground that in the present case although the Reference Court has relied upon the Award passed in the

year 1986 which was also in respect of agricultural tenanted land, the compensation has not been fixed by the Reference Court based on building potential. The learned counsel submitted that under the provisions of the Agricultural Tenancy Act, 1964, there has been always a bar for using the paddy field for any other purpose except with the permission of the Government and even for purposes like raising of crops of coconut, arecanut, cashew or mangoes. Learned counsel placed reliance on Section 3 (1-A) and (1-B) of the Agricultural Tenancy Act, 1964. Relying upon Section 15(1) of the Agricultural Tenancy Act, the learned counsel submitted that no sub-division or sub-letting of the land held by a tenant or assignment of interest is permissible except as otherwise provided in the Act . The learned counsel also placed reliance on Section 18K of the Act which prohibits transfer of a land purchased by a tenant by way of sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Mamlatdar. According to the learned counsel, enactment of the Goa Land Use (Regulation) Act, 1991, in no way changes the position insofar as fixing the compensation of the acquired land is concerned, with reference to the Award passed in the year 1986. According to the learned counsel, two of the properties which were the subject-matter of the Award passed in the year 1986 were paddy fields bearing survey no.108/5 and no.108/7 and the Land Acquisition Officer after considering the material before him, fixed the

compensation payable in respect of the said land at the rate of Rs.15/- per sq. mt. and as such, the same could be the basis for fixing the compensation in respect of the remaining portions of the land bearing survey nos.108/5 lands 108/7. According to the learned counsel, the Awards given by the Collector are relevant material and they are in the nature of admission with regard to the value of the land on behalf of the State. According to the learned counsel the Award given by the Land Acquisition Officer in respect of a part of the land which was acquired earlier is the best piece of evidence for fixing the compensation in respect of the remaining part of the land acquired at a later stage. In support of this submission, the learned counsel placed reliance on the judgment of the Apex Court in ***The State of Madras vs. A.M. Nanjan & Anr.*** (AIR 1976 SC 651) and ***Karan Singh & Ors. vs. Union of India*** (AIR 1997 SC 3889). Insofar as increase of 10% every year awarded by the Reference Court while fixing the compensation in respect of the acquired land, Mr. Nadkarni submitted that the Apex Court has time and again held that ordinarily 10% increase per year has to be granted. However, Mr. Nadkarni has fairly left the increase of rate of interest to be awarded to the discretion of this Court. Mr. Nadkarni further submitted that the respondents are entitled to the entire compensation and the owners are entitled to Rs.0.40 per sq. metre. According to the learned Counsel the Special Land Acquisition Officer had awarded Rs.8.10 per sq. metre to

the respondents and Rs.0.40 per sq. metre to the owners of the said land and the owners had not sought any reference and, therefore, the reference Court ought not to have awarded 50 % of the compensation to the owners in the reference sought by the tenants in respect of the acquired lands.

7. I have considered the submissions made by the learned counsel for the parties and I have gone through the judgments relied upon by the learned counsel appearing for the respondents. I have gone through the records in each of these appeals.

8. The only point for determination which arises in all these appeals is whether the Reference Court was justified in fixing the compensation in respect of the acquired lands at the rate of Rs.24/- per sq. mt. and if not, what is the compensation payable in respect of the acquired land?

9. In so far as the first submission of Mr. Afonso that the acquired land has no building potential and therefore the Reference Court could not have enhanced the compensation, I am unable to accept the said submission for the simple reason that the Reference Court has relied upon an earlier Award passed in the year l989, which was concerning, inter alia, part of the lands bearing survey no.108/5 and 108/7, parts of which have been acquired in the present case. That being the position, in my opinion, the Reference Court was

fully justified in placing reliance upon an Award passed by the Land Acquisition Officer in respect of parts of the lands acquired earlier. It is to be noted that the Reference Court has not fixed the compensation in respect of the acquired land on the basis of the building potential but the compensation has been fixed on the basis of an earlier Award passed in respect of parts of the lands which are the subject-matter in the present appeals. I find considerable force in the submission of Mr. Nadkarni that the ratio of the judgment rendered in First Appeal no.221/2003 is not applicable in the present case inasmuch as in the said appeal this Court has held that compensation cannot be fixed in respect of agricultural tenanted land based on building potential. In the present case, the Reference Court has not fixed the compensation of the acquired lands based on building potential, but has fixed the compensation based on an earlier Award. Needless to mention that the Apex Court has time and again held that the compensation offered by the Land Acquisition Officer in respect of part of the land acquired earlier can be the basis for fixing the compensation in respect of the remaining portion of the land which is acquired later. Mr. Nadkarni is justified in placing reliance on the judgment of the Apex Court in the case of ***State of Madras vs. A.M. Nanjan & Anr.*** (supra) and ***Karan Singh & Ors. vs. Union of India*** (supra), in support of the submission that the Awards given by the Land Acquisition Officer can be relied upon

as a good piece of evidence for determining the market rate of the land acquired under certain circumstances. I am unable to accept the submission of Mr. Afonso that in view of Section 2 of the Goa Land Use (Regulation) Act, 1991, the Reference Court ought to have rejected the reference. Section 2 of the Goa Land Use (Regulation) Act, 1991, would come in the way of an applicant who claims compensation in respect of agricultural tenanted land on the basis of building potential. As stated above, in the present case, the Reference Court has not fixed the compensation in respect of the acquired lands on the basis of building potential, but has fixed the compensation on the basis of an earlier Award, which is permissible in terms of the judgments of the Apex Court which are cited above. I find considerable substance in the submission of Mr. Nadkarni when he points out that even prior to 1991 there were provisions in the Agricultural Tenancy Act which put some restrictions on the rights of an agricultural tenant from using agricultural land and more particularly, paddy fields for any other purpose. I am, therefore, of the view that the approach of the Reference Court in relying upon the Award of 1989 cannot be faulted. Mr. Afonso, learned counsel appearing for the appellants had not seriously disputed that the lands involved in these appeals are in close proximity of the land bearing survey nos. 108/5 and 108/7 and are similar in nature, being paddy fields. That being the position, I do not find any infirmity in the finding given by the

Reference Court that the compensation in respect of all these lands could be fixed at the rate of Rs.15/- in the year 1986.

10. The next question which arises for consideration is whether the Reference Court was justified in granting increase of 10% every year. The Reference Court has granted increase of 10% every year on compounding basis relying upon the judgment in the case of ***V. M. Salgaokar & Brother Ltd. vs. Union of India [*** (1995)2 SCC 302]. After granting increase of 10% every year on compounding basis, the Reference Court has fixed the compensation payable as on 4th July, 1991, at Rs.24/- per square metre. Ordinarily, as held by the Apex Court, ly increase of 10% every year has to be granted, but the question is whether the same principle should apply even in cases where agricultural tenanted lands are acquired. I find considerable force in the submission of Mr. Afonso that the principal of 10% increase every year cannot be applied uniformally irrespective of the nature of the land acquired. I find considerable force in the submission of Mr. Afonso that the land being agricultural tenanted land and being situated in a place like Canacona, which is not developing as fast as other major cities of Goa like Panaji, Margao, etc., a uniform increase of 10% every year, cannot be granted. In my view, the increase in value of land having building potential cannot be equated with the increase in value of agricultural tenanted land, having regard to the several restrictions to

which agricultural tenanted land is put. Nonetheless, the fact remains that judicial notice can be taken of the fact that the prices are increasing every year and even the prices of agricultural tenanted land increase every year. Considering the fact that the acquired lands are paddy field and the lands are situated at Canacona, in my view, increase of 5% and not 10% every year, would be justified. Accordingly, considering the fact that that the acquisition is almost after five years from acquisition involved in the Award of 1986, in my view, the respondents are entitled to increase of 25%. Accordingly, the compensation in respect of the acquired lands comes to Rs.18.75 per square metre I deem it appropriate to round it up to Rs.19/- per square metre Needless to mention that the respondents would be entitled to all the statutory benefits under the Land Acquisition Act, 1894.

11. Insofar as the submission of Mr. Nadkarni that the respondents are entitled to the entire compensation and the owners of the acquired lands are entitled to Rs.0.40p. per square metre, I find considerable force in the said submission. Mr. Afonso has fairly pointed out that the Land Acquisition Officer in the Award has awarded Rs.8.10 per square metre in respect of the acquired lands to the respondents and Rs.0.40p. per square metre to the owners of the said lands. In other words, the market rate of the acquired lands has been fixed by the Land

Acquisition Officer at the rate of Rs.8.50 per square metre and the Land Acquisition Officer has awarded Rs. 8.10 per square metre to the respondents in respect of the acquired land. Mr. Afonso submitted that the owners of the acquired lands have not sought any reference. Therefore, I am unable to accept the approach of the Reference Court in awarding 50% to the respondents and 50% to the owners of the acquired lands on the basis of the judgment given by this Court in First Appeal No.15/88 (***Shri Kashinath Govind Lawanis vs. The Comunidade of Bicholim & Anr.)*** decided on 22nd July, 1991. At this stage it is pertinent to note that the owners of the acquired lands had neither claimed higher compensation, nor they were parties before the Reference Court and, therefore, the Reference Court could not have awarded 50% of the compensation to the owners, having regard to the fact that the owners were not aggrieved by the Award passed by the Special Land Acquisition Office. In any event, the respondents had sought reference under Section 18 of the Land Acquisition Act aggrieved by the grant of compensation at the rate of Rs.8.10 per square metre awarded in respect of the acquired lands in favour of the respondents. If the Reference Court was inclined to enhance the compensation, the Reference Court ought to have awarded the entire enhanced compensation in favour of the respondents. Mr. Afonso, learned counsel has stated that the owners have been already paid at the rate of Rs.0.40p. per square metre

and they have not sought any reference under the Land Acquisition Act. That being the position, in my view, the respondents are entitled to the entire compensation awarded. The respondents have filed cross-objection claiming the entire compensation and Mr. Afonso has not opposed grant of entire compensation in favour of the respondents. I, therefore, hold that the respondents are entitled to compensation at the rate of Rs. 24/- per square metre and the entire compensation has to be paid to the respondents.

12. In view of the above discussion, the Appeals are partly allowed and the compensation payable in respect of the acquired lands is fixed at Rs.19/- per square metre. The entire compensation is ordered to be paid to the respondents. The impugned Awards stand modified accordingly. However, the cross-objection in First Appeal No.23/2001, insofar as the respondents seek higher compensation at the rate of rs.120/- per square metre, is dismissed. Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

A. P. LAVANDE, J.

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